

From: O'Connor Family
To: Microsoft ATR
Date: 11/19/01 6:21pm
Subject: Microsoft Antitrust Settlement

Dear Sir/Madame:

I understand that this e-mail address has been set up so that citizens can offer their feedback on the recently negotiated settlement between MS and the Justice Department. I have no idea how a company like MS can be found guilty by two federal courts of using their monopoly power to injure consumers and the competition and be let off the way they are by this settlement. Below is a recent column by Thomas Oliphante of the Boston Globe which speaks better to my feelings than I feel capable.

Kevin R. O'Connor
Buffalo, New York

>FOR TOM REILLY, part of whose job as Massachusetts attorney general
>involves smelling rats, the so-called settlement with Microsoft he was
>asked to sign off on this month with virtually no notice reeked of rodent.
>Because his nose was working, Reilly put up a caution sign, which became a
>stop sign. The result: Possibly the worst settlement ever negotiated in
>the most important antitrust case since Big Oil got busted nearly a
>century ago will have to fight for its life on the merits.
>Maybe parts of the deal with Microsoft will prove worthwhile upon close
>inspection. Maybe the bad parts will get exposed clearly for what they
>are. Maybe the whole thing deserves the garbage pile. But at least, thanks
>to Reilly's unwillingness to get rolled in what he described as "a
>classic maneuver," we will all get a fair chance to find out.
>In major league lawsuits involving the public interest - and the Microsoft
>case is a classic - there ought to be two basic rules for negotiations
>between the government and the offending firm. The first should be that a
>settlement should not be welcomed or approved simply because it has been
>reached. Conversely, it should not be opposed or rejected simply because
>of the compromises it includes.
>In this case, Reilly responded with a snap of his fingers when I asked him
>how tough it was to figure out what was going on in the Microsoft case.
>The federal judge now in charge of the case in Washington had encouraged
>settlement talks, but as far as anyone knew (particularly the 18 states
>that are every bit as much a part of the action as the Justice Department)
>they were proceeding very slowly.
>Then, with what Reilly calls "unexpected suddenness," the states were
>told from Washington that there was a deal, in which their input has been
>a flat zero. They would have no more than 48 hours to review it before it
>would be announced to the public and to Judge Colleen Kollar-Kotelly.
>The Justice Department - as in President Bush's political appointees who
>had frozen out the experienced lawyers who had actually dealt with the

>case - signed the deal. When Reilly, on behalf of Massachusetts, asked for
>a week to study the thing, he got two working days plus last weekend.
>But it was enough. It was obvious that a steamroller had been put in
>motion. When that happens, it's usually because the light of day is feared.
>It was then up to the states to find out why. During that weekend, the
>other major player from the states, the veteran attorney general of Iowa,
>Tom Miller, organized a series of conference calls with various players in
>the technology business, the victims as it were of Microsoft's officially
>found violations of the law. The result was a sound basis for opposing the
>Bush administration's proposed deal.
>For Reilly, whose background is in trial courts as a prosecutor going
>after crooks, it helped to start with the fact that Microsoft was found
>guilty (twice) of illegally abusing its monopoly position in the operating
>system software for personal computers. So, as Reilly told me, it made
>sense to examine the penalties in the settlement suggested for the
>repeated offenses.
>There were none. There was nothing to undo the monopoly power - and
>precious little to effectively prevent future violations. As Reilly put
>it, for every proposed rule there was an exception, for every Microsoft
>commitment there was a loophole. The agreement had only a five-year time
>frame, with the computer manufacturers designated as the cop on the beat
>for the deal, but deprived of nightstick or gun.
>Not only that, but the oversight committee for the deal would be dominated
>by members beholden to the convicted defendant, Microsoft. And get this:
>If the committee found evidence of noncompliance in its work, that
>evidence could not be presented to a judge in court.
>"That is crazy," Reilly said.
>Microsoft, and its Bushie allies, have succeeded in splitting the 18 state
>plaintiffs. But the remaining nine are anchored by arguably the two most
>important technology states, California and Massachusetts, with Tom
>Miller's Iowa, a consumer protection leader, in the middle. The
>steamroller was stalled.
>What happens now is that the settlement can be examined in depth, with the
>aid of evidence and testimony under oath. As I said, parts of it may hold
>up under this light.
>But those like Reilly who want to pursue their vision of a fair shot for
>innovation and maybe a cheaper Windows some day, who believe that the
>opportunity to make a better widget out of Microsoft's shadow is central
>to the country's economic future get a chance, too.
>In all, it was one fine piece of lawyering on behalf of the beleaguered
>public interest.